IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TMG HEALTH, INC.,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 07-115
	:	
v.	:	
	:	
UNITEDHEALTH GROUP, INC.,	:	
	:	
Defendant.	:	

ORDER AND MEMORANDUM

AND NOW, this 26th day of April 2007, upon consideration of Defendant UnitedHealth Group, Inc.'s ("UnitedHealth") Motion to Stay Judicial Proceedings Pending Arbitration, Plaintiff TMG Health, Inc.'s ("TMG") Response in opposition thereto, and Defendant's Reply, as well as Plaintiff's Motion to Bifurcate and to Enforce Settlement Agreement, and after oral argument on the motions, it is hereby ORDERED that Defendant's Motion to Stay Judicial Proceedings Pending Arbitration is GRANTED, Plaintiff's Motion to Enforce Settlement Agreement is DENIED AS MOOT, and the above-captioned matter is placed in SUSPENSE pending determination of the arbitration proceeding for the reasons that follow.

The issue raised by the motions and determined by the court is whether the matter should be resolved by arbitration pursuant to a prior Administrative Services Agreement ("ASA") or whether an alleged unsigned Settlement Agreement, assertedly without an arbitration provision, should be enforced.

The averments of TMG's Complaint are taken as true for purposes of this disposition.

In April of 2005, TMG entered into the ASA with PacifiCare to perform various

administrative services relating to health benefits plans sold by PacifiCare. The ASA included a comprehensive arbitration clause, which provided that "any controversy, claim or dispute . . . arising out of or relating to the performance of the Administrative Services" shall be resolved by arbitration. Later that year, UnitedHealth announced its intentions to merge with PacifiCare. TMG avers that it continued to expend money in preparation for the services it would ordinarily be expected to provide under the belief that the ASA would continue despite PacifiCare's acquisition.

Following UnitedHealth's acquisition of PacifiCare, the relationship between TMG and UnitedHealth began to deteriorate. They entered into negotiations of their differences. This allegedly resulted in the Settlement Agreement at issue, which would give TMG $5.2 million in relief. A draft Settlement Agreement prepared unilaterally by TMG was never signed by UnitedHealth. TMG has alleged in its Complaint breach of contract, negligent misrepresentation, and intentional misrepresentation claims against UnitedHealth, asserting that the alleged Settlement Agreement is the full agreement between it and United Health to the exclusion of the ASA.

It is well-settled that there is a strong presumption in favor of arbitration. 9 U.S.C. § 3; Paine Webber Inc. v. Harmann, 821 F.2d 507, 511 (3d Cir. 1990). In light of this presumption, arbitration clauses are to be read broadly. Medtronic AVE Inc. v. Cordis Corp., 100 Fed. Appx. 865, 868-869 (3d Cir. 2004). When an arbitration clause refers to all matters "arising from" an agreement, it "overwhelmingly suggests that a given dispute is arbitrable." Id. at 869. The language of the arbitration clause in the ASA, providing that "any controversy, claim or dispute . . . arising out of or relating to the performance of the Administrative Services" be subject to

arbitration, is of the broadest nature. See id.

TMG's claims are subject to the arbitration clause because without question they relate to or arise out of the ASA. On its face, the TMG Complaint is dependent upon the ASA. TMG's breach of contract claim refers to the ASA at several points. Both misrepresentation claims relate to the ASA. TMG has averred that it "justifiably relied on [UnitedHealth's] representations in continuing to *perform under the [ASA]*." (Pl. Cmpl. ¶ 65 (emphasis added).) Because arbitration clauses are read broadly and the language of the clause is broad, it cannot be said that TMG's claims do not arise out of or relate to the ASA.

TMG further argues that UnitedHealth may not invoke the arbitration clause because its claims are against UnitedHealth, which is not a signatory to the ASA. When a nonsignatory seeks to resolve issues that are intertwined with an original agreement that has an arbitration clause, estoppel applies to enforce the arbitration clause. Bannett v. Hankin, 331 F. Supp. 2d 354, 359 (E.D. Pa. 2004); see E.I. DuPont De Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates, S.A.S., 269 F.3d 187, 199-200 (3d Cir. 2001). Estoppel "applies when a signatory . . . must rely on the terms of the agreement to assert its claims against the nonsignatory such that the signatory's claims make reference to or presume the existence of the written agreement, or the signatory's claims arise out of and relate directly to the written agreement." Bannett, 331 F. Supp. 2d at 359-360.

TMG's claims, including for breach of contract, enforcement of the $5.2 million payment under the Settlement Agreement, and consequential damages, all implicate Pacificare's treasury and its rights and obligations under the ASA. The rights and obligations of UnitedHealth are inextricably intertwined with those of Pacificare. They not only arise out of UnitedHealth's

acquisition of Pacificare, but the claimed breached Settlement Agreement encompasses all claims asserted, or claims that could have been asserted, by Pacificare under the ASA. Due to the inextricably intertwined relationship between PacifiCare and UnitedHealth, claims against UnitedHealth are effectively claims against PacifiCare. Therefore, UnitedHealth has standing to enforce the clause, and the matter must be arbitrated because TMG's claims are subject to the arbitration clause in the ASA. See id.

TMG, in moving to enforce the alleged Settlement Agreement, which assertedly does not contain an arbitration clause, argues that a factual determination is necessary to permit proof that the Settlement Agreement, though unsigned, was the full and final agreement of the parties. (See Pl.'s Mem. in Opp'n to Def.'s Mot. to Stay 16-17, 34-35 (citing Par-Knit Mills v. Stockbridge Fabrics, 636 F.2d 51, 54 (3d Cir. 1980); A/S Custodia v. Lessin Int'l, Inc., 503 F.2d 318 (2d Cir. 1974); Interocean Shipping Co. v. Nat'l Shipping & Trading Corp., 462 F.2d 673 (2d Cir. 1972); Willow Valley Manor v. Trouvailles, Inc., 977 F. Supp. 700 (E.D. Pa. 1997); Century Steel Erectors, Inc. v. Aetna Casualty & Surety Co., 757 F. Supp. 659, 660 (E.D. Pa. 1990); Ferreri v. First Options of Chicago, Inc., 623 F. Supp. 427 (E.D. Pa. 1985)).) The cases cited by Plaintiff are inapposite because they all involved disputes as to whether a valid arbitration agreement existed, such as whether there was a requisite meeting of the minds. See, e.g., Par-Knit Mills, 636 F.2d at 53-55; A/S Custodia, 503 F.2d at 319-20; Interocean Shipping, 462 F.2d at 675-77; Willow Valley Manor, 977 F. Supp. at 701, 703-04; Century Steel Erectors, 757 F. Supp. at 660-61; Ferreri, 623 F. Supp. at 429, 433-34. Here, the validity of the underlying arbitration provision is undisputed. The question that Plaintiff actually presents is whether the valid arbitration provision applies to the alleged Settlement Agreement. As discussed below, this issue

is subject to arbitration.

In Par-Knit Mills, upon which Plaintiff chiefly relies, the Third Circuit vacated a district court order that had stayed proceedings pending arbitration and remanded the matter for a factual determination of the validity of an arbitration clause. Id. at 55. There, the plaintiff asserted that there was never a "meeting of the minds" on the terms of a contract, which included an arbitration provision, because the document was reviewed merely as a confirmation of delivery dates and signed as such by a lower-level employee, who may not have had authority to enter into a contract. Id. at 53. The Third Circuit found that a factual determination is warranted only if there is doubt whether an agreement to arbitrate exists, that is, there must be an unequivocal denial that an agreement had been made and this denial must be supported by affidavits. Id. at 54-55. Where, however, an "express and unequivocal" agreement to arbitrate exists, a factual determination is not required. Id. at 54. In this case, the validity of the "express and unequivocal" underlying arbitration provision itself is not disputed and, therefore, there is no need for a factual determination of the matter. See id.

To rescind or amend an arbitration clause, the document must, on its face, expressly and unambiguously abrogate the arbitration provision of the prior document. Berkery v. Cross Country Bank, 256 F. Supp. 2d 359, 369 (E.D. Pa. 2003) (citing Nolde Bros. v. Bakery & Confectionery Workers Union, 430 U.S. 243, 255 (U.S. 1977)). The unsigned draft Settlement Agreement, whether valid or not, did not on its face expressly or unambiguously abrogate the valid underlying arbitration provision in the ASA. Indeed, the Settlement Agreement referenced itself as an addendum to the ASA.

Furthermore, the dispute as to whether the Settlement Agreement is binding and

abrogates the ASA arbitration clause is itself an arbitrable dispute because it is inescapably intertwined with the interests of PacifiCare, a signatory to the underlying ASA and arbitration clause. The existence of an enforceable arbitration agreement between TMG and PacifiCare is undisputed. Therefore, the court will not opine whether arbitration was imputed into the Settlement Agreement. See 9 U.S.C. § 4 (mandating district courts to order the parties to arbitrate "upon being satisfied that the making of the agreement for arbitration . . . is not in issue"). That issue is necessarily committed to the arbitration arena.

As a matter of law, the court is bound to uphold the arbitration provision in the ASA.

The above-captioned matter is placed in suspense pending the resolution of all arbitrable matters in accordance with the arbitration clause of the ASA.

BY THE COURT:

S/ James T. Giles
J.